



## Office of the Attorney General

State of Texas

September 24, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Burton F. Raiford  
Commissioner  
Texas Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR92-542

Dear Commissioner Raiford:

You inform us that the Texas Department of Human Services (the "department") has received a request for information concerning the selection of an individual to fill a particular job posting. While the department does not contest the release of some of the requested information, it claims that section 3(a)(11) of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a, excepts certain parts of the requested information from required public disclosure. You have submitted for our review the information that you believe is responsive to the request, marking those documents that you contend section 3(a)(11) excepts from required public disclosure.

We note that the documents you have marked consist of two kinds of documents: first, notes evaluators made during interviews with each applicant the department interviewed; and second, documents entitled "Performance Development Plan and Evaluation" (the "annual performance evaluation"), which appear to be annual performance evaluations completed by the supervisor of each applicant who is an employee of the department. While we ultimately conclude that section 3(a)(11) permits the department to withhold from the requestor most of each annual performance evaluation discussing an applicant, we do not believe that section 3(a)(11) protects from required public disclosure notes an evaluator took of an applicant's oral answers to previously prepared interview questions. We will consider the two types of documents -- evaluators' notes and annual performance evaluations -- separately.

Section 3(a)(11) of the act excepts from required public disclosure inter-agency and intra-agency memoranda and letters. The purpose of this exception is "to protect from disclosure advice and opinion on policy matters and to encourage

open and frank discussion" within an agency concerning administrative action. See Attorney General Opinion H-436 (1974) at 2. Accordingly, section 3(a)(11) protects inter-agency and intra-agency memoranda only to the extent that they contain advice, opinion, and recommendation on policy matters intended for use in a governmental body's deliberative process. Open Records Decision No. 574 (1990) at 1-2; Attorney General Opinion H-436 at 2. Section 3(a)(11) does not permit a governmental body to withhold facts and written observations of facts and events if such information is severable from advice, opinion, or recommendation. Open Records Decision No. 574 at 2.

We consider first the notes the evaluators made during interviews with some of the applicants. All applicants who the evaluators interviewed were asked an identical set of questions that had been formulated prior to the initial interview. The questions required the applicant to define certain relevant terms, demonstrate a familiarity with relevant Texas law, and predict how the applicant would handle certain hypothetical situations. The notes the evaluators made during interviews with the applicants consist solely of outlines or summaries of each applicant's responses to the questions and contains no evaluative content. While these responses may be characterized as an applicant's opinion, that opinion does not relate directly to policy matters or administrative action the department is contemplating, nor do the applicants intend that their responses be used in the department's deliberative process on a policy matter. See *Id.* at 1-2. Accordingly, section 3(a)(11) does not permit the department to withhold the evaluators' notes from required public disclosure.

Regarding the annual performance evaluations of the applicants, we agree that the evaluations consist largely of advice, opinion, or recommendation. Consistent with earlier informal decisions of this office concerning similar evaluation forms, however, we conclude that section 3(a)(11) does not except from required public disclosure the brief job description and column labelled "Performance Plan" because this information is factual in nature. Letter from Office of the Attorney General's Opinion Committee to Marlin W. Johnston 2 (Mar. 11, 1988). Furthermore, section 3(a)(11) does not permit the department to withhold the employee's name, job title, social security number, and date of hire, also because these pieces of information are factual in nature. Accordingly, the department must release to the requestor the brief job description, the column labelled "Performance Plan," and information stating the employee's name, merit system and functional job title, social security number, and date of hire. Section 3(a)(11) permits the department to withhold the remainder of the annual performance evaluations.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-542.

Yours very truly,

A handwritten signature in cursive script, reading "Kimberly K. Oltrogge". The signature is written in dark ink and is positioned above the printed name and title.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

KKO/lmm

Ref.: ID# 17283  
ID# 15463  
RQ# 397

cc: Ms. Judy Blackwell  
309 E. Frence  
Cuero, Texas 77954